

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER**

IN RE CHARGES OF RACHEL GIL,	)	
	)	
UNITED STATES OF AMERICA,	)	
Complainant,	)	8 U.S.C. § 1324b Proceeding
	)	
v.	)	OCAHO Case No. 97B00152
	)	
TEMPSTAR SERVICES, INC.,	)	Judge Robert L. Barton, Jr.
Respondent.	)	
	)	

**ORDER GOVERNING PREHEARING PROCEDURES**

*(December 2, 1997)*

In the Second Prehearing Order issued on November 19, 1997, I ordered the parties to file with the Court by December 1, 1997, joint or separate proposed procedural schedules. As provided in the Rules of Practice and Procedure, "file" means that the schedules must be received by the Court by that date. 28 C.F.R. 68.8(b). Only Complainant has complied with that Order. Therefore, in setting a procedural schedule only Complainant's proposed dates will be considered. Moreover, as provided by the Rules of Practice, a party's failure to respond to a Judge's orders may be construed as an abandonment of its request for hearing. 28 C.F.R. § 68.37(b). I will not dismiss the request for hearing or impose sanctions for this first failure to comply, but if Respondent fails to comply with orders in the future, sanctions, including dismissal of the request for hearing, may be imposed.

As to Complainant's proposed schedule, Complainant proposes that the initial disclosures required by Rule 26(a)(1), Fed. R. Civ. P. be made by January 7, 1998, and that a telephone prehearing conference be scheduled on or after that date. That date will be adopted for the initial disclosures required by Rule 26(a)(1), but the conference will be held on the following day Thursday, January 8, 1998, at 1:30 p.m. Eastern Time (10:30 a.m. Pacific Time). So that the disclosures may be discussed during the conference, the parties are ordered to ensure that the initial disclosures are received by the opposing party not later than January 7, 1998.

Complainant proposes that disclosure of any expert testimony be accomplished within sixty days of the hearing. Rule 26(a)(2) contemplates that such disclosure be made at least ninety days before the trial, and I will adopt that requirement here. As to the disclosures required

by Rule 26(a)(3), generally those are not required until thirty days before trial. However, in this case I will require the parties to file a tentative witness and exhibit list sooner than that, but will allow amendments up to thirty days before the hearing.

Therefore, the following procedural schedule is adopted:

Initial Disclosures Required by Rule 26(a)(1)(A)-(C)	January 7, 1998
Prehearing Conference	January 8, 1998
Filing of Preliminary Witness and Exhibit Lists	February 9, 1998
Completion of Discovery	March 31, 1998
Filing of Dispositive Motions	April 15, 1998

I will not set a hearing date at this time, but I expect that the hearing will be set after a ruling is made on any dispositive motions or, if no such motion is filed, then sixty days after completion of discovery.

Discovery requests must be served at least thirty days before the discovery deadline so that responses may be served within the discovery period. See 28 C.F.R. §§ 68.19-68.21 (permitting thirty days to respond) and 68.8 (allowing an additional five days to respond if the document is served by mail)

The witness list shall state the name, address (including city and state), title (if applicable) and business telephone number of each witness; shall describe the subject matter of the testimony and the specific issues on which the witness will testify; shall state the exhibits, if any, which shall be offered through each witness; and shall state for each witness the approximate amount of time needed for the direct examination of the witness.

The exhibit list shall list the exhibits by their exhibit number and shall state the title and date (if any) of the exhibit, and shall describe the subject matter and relevancy of the exhibit. The exhibit list also will specify the number of pages in the exhibit (e.g. CX-A-1 through CX-A-4). Each exhibit shall be marked separately with a capital letter and numbered sequentially within each exhibit; the prefix CX shall precede the capital letter in Complainant's exhibits and the prefix RX shall precede Respondent's exhibits (e.g. CX-A, CX-B, CX-C; RX-A, RX-B, RX-C, etc.). Exhibits consisting of more than one page shall be numbered sequentially within each exhibit (e.g. CX-A-1, CX-A-2, etc.). Further, if a party attaches exhibits to a brief or memorandum, they also must be marked in the same manner described above for trial exhibits.

Any dispositive motion must be supported by a brief or memorandum, which must contain a table of contents, a table of citations, and an index of any exhibits attached to the brief. Any cases

cited in the brief or memorandum shall contain a pinpoint citation to the specific page(s) referenced in the decision. Finally, all documents, whether pleadings, exhibits, memoranda or briefs, must be sequentially paginated.

Any modifications to the witness and exhibit list, or service of additional exhibits, shall not be made later than 30 days before the scheduled hearing unless good cause is shown and specific permission to do so is granted by the judge. However, documents or other exhibits not offered in evidence but used solely for cross-examination (e.g. impeachment of a witness) do not need to be listed.

When a party files an application for a subpoena with an Administrative Law Judge pursuant to 28 C.F.R. § 68.25(a), the party shall serve the other party with a copy of the application. Further, when the subpoena is issued, the opposing party will be served with a copy of the subpoena.

In responding to discovery requests, if a party asserts privilege as a ground for refusing to produce a document, in whole or in part, in response to a discovery request, the objecting party shall identify the document by title, author(s), addressee(s), and subject matter and shall describe why the document, in whole or part, is protected by the privilege. As provided by the OCAHO Rules of Practice and Procedure, 28 C.F.R. § 68.6(a), the parties shall not file requests for discovery, answers or responses thereto with the Administrative Law Judge at the time that they are served. However, when filing a motion to compel a party shall include a copy of the disputed discovery requests and responses. A motion to compel discovery also shall include a certification that the movant has in good faith conferred or attempted to confer with the party failing to make the discovery in an effort to resolve the discovery dispute. See 28 C.F.R. § 68.1; Fed. R. Civ. P. 37(a)(2)(B). If a party fails to include such certification, the motion to compel may be rejected.

All requests for relief, including requests for an extension of time, shall be submitted in the form of a written motion, not a letter. Motions for an extension of time shall state whether the movant has conferred or attempted to confer with the opposing party, shall be submitted prior to the due date of the submission, and shall include a proposed order.

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**ROBERT L. BARTON, JR.**  
**ADMINISTRATIVE LAW JUDGE**

## CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of December, 1997, I have served the foregoing Order Governing Prehearing Procedures on the following persons at the addresses shown, by first class mail, unless otherwise noted:

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